

of the Act, would have become payable, to you or on your behalf at or before the time of the filing of your application for exemption.

(e) The tax exemption ceases to be effective for any taxable year ending after the time you do not meet the requirements of paragraph (a) of this section or after the time we find the religious sect or division of the sect of which you are a member no longer meets the requirements of paragraph (c) of this section. If your tax exemption ceases to be effective, your waiver of the right to receive Social Security and Medicare part A benefits will also no longer be effective. Benefits may be payable based upon your wages for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon your self-employment income for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

[45 FR 20075, Mar. 27, 1980, as amended at 58 FR 64890, Dec. 10, 1993]

§ 404.1077 Individuals under railroad retirement system.

If you are an employee or employee representative as defined in section 3231 (b) and (c) of the Code, your work is not a trade or business. Your services are covered under the railroad retirement system.

SELF-EMPLOYMENT INCOME

§ 404.1080 Net earnings from self-employment.

(a) *Definition of net earnings from self-employment.* If you are self-employed, you must first determine the amount of your net earnings from self-employment before figuring the amount of your earnings that count for social security purposes. Some of your earnings may not be included as net earnings from self-employment even though they are taxable for income tax purposes. If you are an employee but we consider you to be self-employed for social security purposes, you must figure your earnings as though you were actually self-employed unless you work for a church or church-controlled organi-

zation that has exempted its employees (see § 404.1068(f)). Subject to the special rules in §§ 404.1081 through 404.1095, the term *net earnings from self-employment* means—

(1) Your gross income, as figured under subtitle A of the Code, from any trade or business you carried on, less deductions attributed to your trade or business that are allowed by that subtitle; plus

(2) Your distributive share of income (or loss) from a trade or business carried on by a partnership of which you are a member, as described in paragraph (b) of this section.

(b) *Income or loss from a partnership.* (1) Your distributive share (whether or not actually distributed) of the income or loss from any trade or business carried on by a partnership of which you are a member, other than as a limited partner, is determined under section 704 of the Code.

(2) If you are a limited partner, your distributive share is included in your net earnings from self-employment if—

(i) The amount is payable to you for services you render to or on behalf of the partnerships; and

(ii) It is a guaranteed payment described in section 707(c) of the Code.

(3) You are a *limited partner* if your financial liability for the obligations of the partnership is limited to the amount of your financial investment in the partnership. Generally, you will not have to perform services in the operation of, or participate in the control of, the business carried on by the partnership for the taxable year involved.

(c) *Reporting methods.* Your gross income from a trade or business includes the gross income you received (under the cash method) or that accrued to you (under the accrual method) from the trade or business in the taxable year. It is immaterial that the income may be attributable in whole or in part to services you rendered or other acts you performed in a prior taxable year.

(d) *What is a taxable year.* (1) The term *taxable year* means—

(i) Your annual accounting period on which you regularly figure your income in keeping your books; or

(ii) A short period resulting from your death before the end of your annual accounting period or from a

change of your annual accounting period.

(2) The term *annual accounting period* means—

(i) A calendar year, consisting of 12 months ending on December 31; or

(ii) A fiscal year, consisting of—

(A) 12 months ending on the last day of any month other than December; or

(B) A period, if elected under section 441 of the Code, that varies from 52 to 53 weeks and always ends on the same day of the week that occurs last in a calendar month or nearest to the last day of the calendar month.

(3) Your taxable year for figuring self-employment income is the same as your taxable year for the purposes of subtitle A of the Code. Your taxable year is a calendar year if—

(i) You keep no books;

(ii) You have no annual accounting period; or

(iii) You have an annual accounting period that differs from the definition of fiscal year as described in paragraph (d)(2)(ii) of this section.

[45 FR 20075, Mar. 27, 1980, as amended at 50 FR 36574, Sept. 9, 1985]

§404.1081 General rules for figuring net earnings from self-employment.

(a) *Determining net earnings.* (1) In determining your gross income and the deductions attributable to your trade or business for the purpose of determining your net earnings from self-employment, the provisions that apply to the taxes imposed by sections 1 and 3 of the Code are used.

(2) If you use the accrual method of accounting to figure your taxable income from a trade or business, you must use the same method in determining your net earnings from self-employment.

(3) If you are engaged in a trade or business of selling property on the installment plan and elect, under the provisions of section 453 of the Code, to use the installment method of accounting in figuring your income, you must use the installment method in determining your net earnings from self-employment.

(4) Any income which can be excluded from gross income under any provision of subtitle A of the Code cannot be

counted in determining your net earnings from self-employment, unless—

(i) You are a resident of Puerto Rico (see §404.1089);

(ii) You are a minister or member of a religious order (see §404.1091);

(iii) You are a United States citizen or resident engaged in a trade or business outside the United States (see §404.1092); or

(iv) You are a citizen of, or have income from sources within, certain possessions of the United States (see §404.1093).

(b) *Trade or business carried on.* You must carry on the trade or business either personally or through agents or employees. Income from a trade or business carried on by an estate or trust is not included in determining the net earnings from self-employment of the individual beneficiaries of the estate or trust.

(c) *Aggregate net earnings.* If you are engaged in more than one trade or business, your net earnings from self-employment consist of the total of the net income and losses of all the trades or businesses you carry on. A loss in one trade or business you carry on offsets the income from another trade or business.

(d) *Partnerships.* When you have net earnings from self-employment from a partnership as described in §404.1080 (a) and (b), those net earnings are combined with your other net earnings from self-employment in determining your total net earnings from self-employment for the taxable year.

(e) *Different taxable years.* If you are a partner and your taxable year is different from that of the partnership, you must include, in figuring your net earnings from self-employment, your distributive share of the income or loss of the partnership for its taxable year ending with or within your taxable year. For the special rule in case of the termination of a partner's taxable year as a result of death, see §404.1087.

(f) *Meaning of partnerships.* A partnership for social security purposes is one that is recognized as a partnership for income tax purposes. For income tax purposes, the term *partnership* includes not only a partnership as known under common law, but also a syndicate,